IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

REVIEW APPLICATION NO. 10 OF 2004
IN
SECOND APPEAL NO. 304 OF 2003

Shri Vasantrao Gopalrao Deshmukh ... Applicant

V/s

Shri Raghunath Damodhar Joshi & ors. ... Respondents

Shri G.S. Godbole with P.R. Arjunwadkar for the applicant.

Shri S.S. Shah for the respondents.

CORAM: P.V. KAKADE, J.

DATED: 3RD DEC., 2004.

P.C.:

1. This is a review petition filed by the aggrieved appellant against the order dated 16.4.2003 passed by this Court (R.J. Kochar, J. since retired) in Second Appeal No. 304 of 2003. By the said order, the learned Single Judge dismissed the appeal in limine after making certain observations regarding the submissions made by both sides before him. The matter was carried to the Supreme Court. The Hon’ble Judges of the Supreme Court passed the following order :-

> "After arguing for sometime, the Ld. counsel for the petitioner sought permission to withdraw this petition on the ground that a substantial question of law to the effect that the suit is hit by Section 4 of Benami Transactions (Prohibition) Act, 1988 was raised and urged, but, the High Court did not consider the same and on that account he wants to move the High Court in review.
>
> Permission granted.
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> In the light of what is stated above, the special leave petition is dismissed as withdrawn."

Consequent upon this order, the present review application is filed inter-alia submitting that the learned Single Judge did not consider the substantial question of law to the effect that the suit was hit by Sec. 4 of the Benami Transactions (Prohibition) Act, 1988. Therefore, prejudice was caused to them which amounts to error apparent on record and hence it is submitted that the review should be allowed and matter should be placed for admission afresh.

2. The learned counsel for the respondents submitted that the learned Single Judge, while adjudicating the second appeal by order dated 16.4.2003, has taken into account all the relevant aspects. He has also observed, "The substantial questions of law raised before me have been rightly considered in the judgment impugned here." On the basis of this statement in the said order, it is submitted that the learned Single Judge has, in fact, dealt with all the substantial questions of law raised in this appeal and, therefore, the review cannot lie. I prefer to disagree with this proposition. It is needless to mention that, mere making of sweeping statement that substantial questions of law raised are rightly considered by the lower Court, would not be the compliance contemplated by Sec.100 of the C.P.C. In other words, it would be incumbent upon the Judge sitting over the second appeal admissions to take up the substantial questions of law and after hearing both parties, accept or discard the same at least by referring to those questions, which has not been done here.

3. The learned counsel for the respondents brought to my notice the Apex Court judgment in the case of **Devaraju**

Pillai v/s Sellayya Pillai, reported in A.I.R. 1987 SC 1160, wherein it is observed that if the parties aggrieved by the judgment of the single Judge stood in second appeal, appropriate remedy is to file the appeal against that judgment. A remedy by way of an application for review is entirely misconceived and if a single Judge entertains the application for review, then he totally exceeds his jurisdiction in allowing the review, merely because he takes a different view on construction of the document.

This observation is pertaining to review application which was made without filing the appeal and, therefore, cannot be made applicable. The Apex Court has further held that, on an application being filed for review of the judgment of the learned Single Judge, another learned Single Judge of the High Court - the Judge who heard the second appeal not being available, virtually sitting in judgment over the decision of the learned Judge who decided the second appeal construed the document differently and held that it was a will and not a deed of settlement. This, the learned Single Judge was not entitled to do.

This observation would not be applicable to the present case, because what is sought to be reviewed is not the

interpretation of documents or any evidence on record, but the question whether substantial question of law, which was admittedly raised and urged, was not even referred to in the said order, which, in my view, was contrary to the provisions of Sec. 100 of Code of Civil Procedure, which amounts to error apparent on the record. It is also to be noted that the learned Judge who passed the impugned order dated 16.4.2003 (R.J. Kochar, J.) is retired and, therefore, obviously this review petition has come to this Court who is holding assignment of the second appeal. In view of this position, I do not see that there is any illegality or irregularity in deciding this review petition in limited manner as noted above. I am also staisfied that the Apex Court ruling noted earlier is not applicable to the present set of facts.

Under the circumstances, the petition is allowed in terms of prayer clause (a).

The matter be placed for admission afresh on 10th January, 2005, first on board.

Interim orders passed in the second appeal during this pendency shall stand continue.

Authenticated copy be supplied.

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

CIVIL APPLICATION NO. 58 OF 2004
IN
REVIEW APPLICATION NO. 10 OF 2004
IN
SECOND APPEAL NO. 304 OF 2003

Office Notes, Office Memoranda of of Coram, appearances, Court's orders and Registrar's orders : Court's or Judge's orders

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CORAM: P.V. KAKADE, J.

DATED: 3RD DEC., 2004

P.C.:

1. Heard learned counsel for both parties. Perused the record.

2. In view of the facts and circumstances, the application is made absolute in terms of prayer clauses (a) & (b) and stands disposed of.

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

CIVIL APPLICATION NO. 59 OF 2004
IN
REVIEW APPLICATION NO. 10 OF 2004
IN
SECOND APPEAL NO. 304 OF 2003

Office Notes, Office Memoranda of of Coram, appearances, Court's orders and Registrar's orders : Court's or Judge's orders

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CORAM: P.V. KAKADE, J.

DATED: 3RD DEC., 2004

P.C.:

1. Heard learned counsel for both parties. Perused the record.

2. In view of the facts and circumstances, the application is made absolute in terms of prayer clauses (a) & (b) and stands disposed of.

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